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No. 06-540

FILED
JAN 18 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

WACLAW M. TROJANEK,

Petitioner,

vs.

SAFEWAY INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals, State Of Arizona, Division One

PETITION FOR REHEARING

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, Arizona 85304
602-938-8522

PETITION FOR REHEARING

STATEMENT OF THE CASE

Petitioner Employee Waclaw M. Trojanek sustained an industrial injury to his lower back on October 11, 2002. His claim for benefits was accepted by the self-insured employer, Safeway Stores Inc. by a notice of claim status dated October 28, 2002, disability and medical benefits until February 15, 2003.

Safeway Inc. has employed Petitioner Waclaw M. Trojanek for 30 years. Petitioner has exemplified a stellar career as Meat cutter/Manager, receiving numerous accolades and awards for exceptional performance from leadership. Petitioner maintained a flawless attendance record for 30 years. Petitioner has never claimed to have had any lower back pain or back injury prior to the accident on October 11, 2002.

Petitioner initially injured himself on the job on October 11, 2002, between 9:00 a.m. and 10:00 a.m. while working as a meat cutter for Safeway Inc. While cutting meat on the meat saw, the Petitioner picked up the cut meat and turned to the left stepping off the safety mat. Petitioner immediately felt a sharp, electric pain like shock that traveled throughout his body starting from his lower back then throughout the rest of his body. Petitioner was instructed to attend physical therapy and rehabilitation for comprehensive lower back rehabilitation therapy by Dr. Zoran Maric, the Industrial Physician. After a few weeks of therapy, there was still no improvement. The only test that was approved by Safeway Industrial was an M.R.I. on Petitioner's lower back.

On January 29, 2003 Petitioner had a follow-up visit with Dr. Zoran Maric, MD. Petitioner's wife, Sophie Trojanek, and Ms. Jaclyn Rogers, Safeway Inc. Industrial case worker, were all present in the examination room. Petitioner briefed Dr. Maric about the pain in his lower back being much worse after the physical therapy. Dr. Maric stated, "Everyone in America has a bulging disk. It should not hurt so much." With that Dr. Maric closed the Petitioner's folder and walked out of the room in disgust. Amazed by Dr. Maric's unprofessional behavior, Petitioner asked Ms. Jaclyn Rogers what was the next course of action to take. Ms. Rogers suggested contacting Liz Williams at Safeway Industrial Office for further guidance. Ms. Liz Williams was contacted later that day, and to this date, Petitioner has never received any guidance from Safeway's Industrial Office to include any assistance from Liz Williams.

Safeway Inc. and Safeway's Industrial Physician, Dr. Zoran Maric, closed the case on February 15, 2003, as Petitioner's lower back injury became worse.

Petitioner was not aware of his Termination from Employment until February 20, 2003. Yet he was asked to return to his Employment on February 15, 2003. Petitioner's Industrial Compensation ended on February 15, 2003. With all the stress from Petitioner's injury and lack of proper health care from the Safeway Industrial Doctor, Petitioner underwent double bypass open heart surgery on February 18, 2003. Petitioner was left to recuperate from lower back injury sustained on the job and open heart surgery without any income to provide for his family which was his wife and five children. Petitioner was left with no alternative but to contact the Industrial Commission of Arizona. The Judge failed to examine all reports.

She accepted the reports from the Industrial Doctor, Zoran Marci, and Safeway Inc. and closed the case.

Upon receiving documents from the Petitioner's closed case, it was then identified by the Petitioner of the existence of a surveillance tape made by Safeway Inc. The tape was used to assist Dr. Zoran Maric in his final report on the Petitioner. After his examination on January 29, 2003, Dr. Zoran Maric's report was vital for Safeway justifying Petitioner's termination of employment and termination of all benefits. Dr. Zoran Maric and Safeway Inc. misidentified and falsified the truth of Petitioner's physical abilities that are noted in the final report. The surveillance tape has been a major factor in closing this case. Nothing on the tape matched the reports by Dr. Zoran Maric and Safeway Inc.

Safeway Inc. made a surveillance tape of petitioner's daily activities. Safeway Inc. and Industrial Doctor Zoran Maric misidentified, lied, and falsified as to the contents of the tape. It was not the petitioner loading groceries into the back of the van while bending and twisting. It was Petitioner's 14-year-old son. Petitioner is only holding a loaf of bread and a bag of potato chips. While at the airport, Petitioner lifted a garment bag, not a suitcase. The surveillance tape was the final report in the decision to take away Petitioner's compensation.

In addition to firing the Petitioner on February 15, 2003, Petitioner is suing Safeway Inc. for $45 million for all the unnecessary stress Safeway Inc. caused dating from November 4, 1996. This started the last six years of Petitioner's employment. Mystery Shopper reported the Petitioner did not smile while working. Petitioner was on vacation 3,000 miles away at this time. This report lost the

Petitioner's stock option. Contributors to stress included age discrimination one day before his 50th birthday, Nationality Discrimination, and accusation of theft of one cup of coffee and two soda pops. With all the added stress, Petitioner underwent open heart double bypass surgery on February 18, 2003. Petitioner never received any compensation for his heart condition.

Petitioner is including the first M.R.I. dated October 17, 2002 and the last M.R.I. dated October 13, 2006.

The last M.R.I. states the Petitioner's condition is not getting better, it is getting worse and the Petitioner is recommending to have more tests. That is Industrial's responsibility. Petitioner sustained an injury on the job at Safeway Inc. on October 11, 2002. Safeway and Safeway's Industrial Doctor, Zoran Maric, closed Petitioner's case on February 15, 2003. After sustaining injury to lower back on the job working faithfully for Safeway Inc. for over 30 years, Petitioner should be receiving Disability Compensation and Medical Benefits for the rest of his life.

Petitioner is an American citizen, Father of 12 children, and a Husband who is unable to continue his role as a provider for his family, to include providing health insurance for his wife and children. If it weren't for his accident on October 11, 2002, at his employment, Petitioner would still be working for Safeway Inc. until he reached the age of 67. Disheartening is the fact that the Petitioner can no longer take advantage of the little things in life that he was able to do prior to his work-related injury on October 11, 2002. Petitioner is no longer part of the family outdoor activities with his children and no longer has the ability to be intimate with his wife at his young age. These issues are constant reminders of Safeway Inc.'s

Neglect as an Employer, and the constant stress the Petitioner faces every moment of his life.

REASONS FOR GRANTING PETITION FOR REHEARING

Reasons for the Supreme Court of the United States to Grant the Petition for Rehearing are: the Arizona Courts from Industrial Commission, the Court of Appeals, and Arizona Supreme Court Failed to do Justice to the Petitioner. None of the Petitions or Motions were granted. They were either dismissed or denied. If the Petitioner does not get justice in the highest Court, the United States Supreme Court, where does he get it? Petitioner is pleading the United States Supreme Court to review this case and grant the Petitioner a fair judgment, not be pushed around for over three years like a piece of trash in the field from one Arizona Court to another.

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, AZ 85304

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, AZ 85304

[Logo]

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Imaging Center

PATIENT NAME: TROJANEK, WAULAW [sic] M.

PATIENT #: 05-78-81

DOB: 08-06-55 AGE: M-47

REFERRING PHYSICIAN: RONALD M. LAMPERT, M.D.

EXAM: MRI OF THE LUMBAR SPINE: 10/15/02

CLINICAL HISTORY: A clinical history of left-sided pain has been provided.

COMPARISON: There are no previous studies available for comparison.

TECHNICAL: Sagittal T2 FSE, sagittal spine-echo T1, sagittal FSE proton density, axial oblique T1, and axial FSE T2 stack imaging was performed.

FINDINGS: The conus medullaris appears normal with respect to caliber, contour, and signal intensity and terminates at the level of the T12-L1 vertebral disk space. The marrow signal appears homogenous. Note is made of a congenitally small spinal canal.

T12-L1: Minor degenerative changes are seen within the facet joints. The intervertebral disk is unremarkable. No significant foraminal narrowing or compromise of the spinal canal is appreciated.

L1-2: Circumferential bulging in the intervertebral disk is appreciated eccentric to the left. Additionally, a superimposed broad-based protrusion of the intervertebral disk is seen eccentric to the left, extending into the left neural

foramen, resulting in a moderate narrowing. Minor degenerative changes are seen within the facet joints. The right neural foramen and the spinal canal appear patent.

L2-3: Minor circumferential bulging in the intervertebral disk is appreciated. Degenerative changes are noted within the facet joints. No significant foraminal narrowing or compromise of the spinal canal is identified.

L3-4: Circumferential bulging of the intervertebral disk is appreciated. Degenerative changes are seen within the facet joints. No significant foraminal narrowing or compromise in the spinal canal is appreciated.

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DIAGNOSTIC IMAGING REPORT

Patient: **Trojanek, Waclaw M**

Sex: M DOB: Aug. 6, 1947 Age: 59

Diag. Imaging #92006

Status: 1. Outpatient Stat

Referring Physician: James Grepling

Exam #193773 – **2006 Oct 13 – MRI LUMBAR SPINE W/O CONTRAST**

ADDENDUM TO MRI OF THE LUMBAR SPINE DATED 10/13/06

ADDENDUM: Comparison films are available from March 30, 2005. The disc protrusion at L4-5 appears new in comparison to the older study. Facet degenerative

changes are also present on the prior examination. Mid to distal abdominal aortic aneurysm was also present on the prior study, but complete characterization with ultrasound or CT would be recommended, as the anterior portion of the aneurysm is obscured.

JS/WL

dd: Oct. 17, 2006

Reported by: John Simon M.D.
Reported and electronically signed: John Simon M.D.

MRI OF THE LUMBAR SPINE

CLINICAL HISTORY: Low back pain and left leg pain.

TECHNIQUE: Sagittal T1, sagittal and axial T2 and axial gradient echo images were obtained.

FINDINGS: There is mild levoscoliosis of the lumbar spine. The alignment is otherwise normal. The marrow signal is normal. There are no compression fractures. The conus terminates normally at T12-L1 and demonstrates normal signal.

The L1-2 and L2-3 disc levels are unremarkable.

At L3-4, there is trace anterolisthesis and there is a mild annular bulge effacing the ventral thecal sac without central canal spinal stenosis or neural foraminal narrowing.

At L4-5, there is a small broad based posterior disc protrusion slightly eccentric to the right side resulting in marked compression of the thecal sac and moderate to marked central canal spinal stenosis. There is mild bilateral

neural foraminal narrowing and mild bilateral facet hypertrophy.

At L5-S1, there is a mild bulging disc without a focal disc protrusion, central canal spinal stenosis or neural foraminal narrowing. There is mild bilateral facet hypertrophy.

IMPRESSION:

1. Mild bulging disc at L3-4 and there is mild bilateral facet hypertrophy.

2. Small broad based disc protrusion at L4-5 slightly eccentric to the right side compresses the right ventral aspect of the thecal sac and results in moderate to marked central canal spinal stenosis and mild bilateral neural foraminal stenosis.

3. Mild bulging disc at L5-S1 and there is mild bilateral facet hypertrophy without central canal spinal stenosis or neural foraminal narrowing.

ADDITIONAL COMMENT: Note is made of an infrarenal abdominal aortic aneurysm which is incompletely imaged and has an approximate AP diameter of 3.3 cm and a transverse diameter of 3.4 cm. Correlation with abdominal CT or ultrasound is recommended.

JU:ap October 15, 2006

dd: Oct. 13, 2006

Reported by: John P. Uglietta M.D.
Reported and electronically signed: John Simon M.D.

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